

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 80-251-E - ORDER NO. 85-651

July 29, 1985

IN RE: Petition for Declaratory Order)
That the Piedmont Hydroelectric)
Project of Aquenergy Systems,) ORDER
Inc. is Entitled to Receive)
Rates Based on Full Avoided)
Costs)

This matter comes before the Public Service Commission of South Carolina (the Commission) upon the petition of Aquenergy Systems, Inc. ("Aquenergy") for a declaratory order that one of its hydroelectric projects is entitled to receive rates based on full avoided costs.

Aquenergy is a South Carolina corporation with its principal place of business in Greenville County. Aquenergy is engaged primarily in the business of acquiring, operating and managing hydroelectric facilities in South Carolina and elsewhere.

Aquenergy owns and operates the Piedmont hydroelectric project ("Project") on the Saluda River in Greenville County, South Carolina. The Project was originally constructed in the late 1800s to provide power to the old Piedmont Mill.

On October 27, 1982, Aquenergy signed a Purchased Power Contract with Duke Power Company ("Duke") under which Aquenergy would sell power generated by the Project to Duke under Duke's PG rate schedule. Aquenergy acquired the Project in November of 1982 from J.P. Stevens & Company ("Stevens"). Thereafter,

Aquenergy invested in extensive renovations necessary to put the Project back into operation as a dependable source of electric power.

Under Duke's "30 minute increment rule," the Project was entitled to receive demand credit payments under the PG rate schedule only if it operated almost continuously during on-peak hours. Because of this rule, the Project received only one demand credit payment in the history of its operation.

By Order No. 85-37 dated January 18, 1985, the Commission rescinded Duke's "30 minute increment rule," allowed Aquenergy and other small power producers in South Carolina to switch to the PP rate schedule, and ordered Duke to commence making capacity credit payments under this schedule at the rate of 1.75 cents per kilowatt hour.

After this ruling was handed down, Duke denied capacity credit payments to Aquenergy on the grounds that the Project represents "old capacity," i.e., it was constructed prior to the date of enactment of the Public Utility Regulatory Policies Act of 1978 ("PURPA").

Duke filed an answer to Aquenergy's petition in which it denies the Project's eligibility to receive capacity credit payments. Duke also asserts that it was unreasonable for Aquenergy to assume that by contracting for the sale of power under the PG rate schedule, it would receive rates based on avoided costs because that schedule was not issued under PURPA.

Finally, Duke contends that Aquenergy has made no showing that the Project requires capacity credit payments in order to remain viable.

In response to Duke's answer, Aquenergy submitted the affidavit of its President, Ralph H. Walker, Jr. This affidavit attached and explained a Statement of Operations for the Project for 1983 and 1984 and a Projection of Operations for 1985. These schedules show that without capacity credit payments, the Project sustained annual losses of \$34,330.00 and \$27,514.00 for 1983 and 1984, respectively, and is projected to lose over \$40,000.00 this year. Mr. Walker states that the Project would have nearly broken even if capacity credit payments had been received. Mr. Walker further explained that at the time he met with Duke's representatives in October 1982, he did not fully understand the fine differences between the PG and PP rate schedules.

Aquenergy also submitted an affidavit of David M. Reeves, Stevens' Director of Real Estate. Mr. Reeves stated his opinion that reasonable capacity credit payments and rate increases must be received if the Project is to become economically viable.

Commission Staff visited the Project and examined Aquenergy's books and records relating to the Project. Although no formal audit of these records was performed, Staff recommended to the Commission that the Project receive rates which include capacity credits in order to provide sufficient encouragement to Aquenergy to continue its operation of the Project. We agree.

Regulations issued by the Federal Energy Regulatory Commission under PURPA permit state regulatory authorities to establish rates for purchases at full avoided cost for facilities which were constructed prior to PURPA's enactment. Specifically, 40 C.F.R. Section 292.304(b) (3) provides:

A rate for purchases (other than new capacity) may be less than the avoided cost if the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or the nonregulated electric utility determines that a lower rate is consistent with paragraph (a) of this section, and is sufficient to encourage cogeneration and small power production. (emphasis added).

Having carefully considered all of the information and data contained in this docket along with Staff's review and recommendation, the Commission is convinced that the receipt of avoided energy credits alone will not provide sufficient encouragement to Aquenergy to continue operation of the Project. Accordingly, IT IS HEREBY ORDERED that:

The Piedmont hydroelectric project of Aquenergy Systems,

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Inc. on the Saluda River is entitled to receive rates based on full avoided costs.

BY ORDER OF THE COMMISSION:

Cecil A. Bowen
Vice Chairman

ATTEST:

James H. Hall
Executive Director

(SEAL)